

**Court No. - 37**

**Case :-** FIRST APPEAL FROM ORDER No. - 2276 of 2005

**Appellant :-** Smt. Perveen Bano And Others

**Respondent :-** U.P.S.R.T.C.

**Counsel for Appellant :-** Ram Singh

**Counsel for Respondent :-** S.K.Mishra

**And**

**Case :-** FIRST APPEAL FROM ORDER No. - 1161 of 2005

**Appellant :-** U.P.S.R.T.C.

**Respondent :-** Smt. Parveen Bano & Others

**Counsel for Appellant :-** Vivek Saran

**Counsel for Respondent :-** Amit Kumar Sinha

**Hon'ble Amreshwar Pratap Sahi,J.**

**Hon'ble Saral Srivastava,J.**

**(Delivered oral by Hon'ble Saral Srivastava, J.)**

Heard Sri Abhishek Kumar holding brief of Sri S.K. Mishra, counsel for the U.P.S.R.T.C. and Sri Amit Counsel for the claimant in both the appeals.

The first appeal F.A.F.O. No.- 1161 of 2005 has been filed by the U.P. State Road Transport Corporation and F.A.F.O. No.- 2276 of 2005 has been filed by the claimant seeking enhancement of the compensation.

We would first deal with the appeal F.A.F.O. No.- 1161 of 2005 filed by the U.P.S.R.T.C. The claimant/respondent no.- 1 to 8 instituted a claim petition for the death of one Mohd. Anish who died in an accident on 15.02.2002 at about 8:50 P.M. which was caused due to the rash and negligent driving of the driver of the Bus. It was further pleaded that Mohd. Anish was Electrician and was earning Rs. 5,000/- per month, and hence the claimant/respondent 1 to 8 prayed for a compensation of Rs. 25,00,000/-.

The claim petition was contested by the U.P.S.R.T.C. by filing written statement contending therein that no accident had taken place by the Bus and the compensation prayed for by the claimant/respondent was highly excessive. The U.P.S.R.T.C. further pleaded in the written statement that the Bus No. U.P.- 70-D- 9037 alleged to be involved in the accident was not on the said route when the accident had

taken place, and it appears that some other vehicle had hit the deceased. The Bus had been falsely implicated in the accident.

On the basis of pleading between the parties the Tribunal framed several issues, the Tribunal after appreciating the entire material and evidence on record held that the accident had taken place by the Bus No. 70-D 9037. The Tribunal on the issue of quantification held the income of deceased to be Rs. 15,000/- per annum and the age of the deceased 35 years, and thereafter calculated the compensation and awarded Rs. 1,74,000/-.

The counsel for the U.P.S.R.T.C. challenging finding on the issue of involvement of the Bus No. U.P. -70-D-9037 has submitted that the FIR was lodged against vehicle no. U.P. 70- D-9037 whereas the claim has been filed against the Bus No.- U.P. 70- D-9037. He further submits that the appellant U.P.S.R.T.C. had produced Gautam Singh D.W.-1 as its witness to prove that the Bus was not involved in the accident and the Tribunal has acted illegally in disbelieving the testimony of D.W.-1.

Considering the submission of the counsel for the appellant, learned counsel for the respondent submits that the claimant had proved by producing Mohd. Kamer Alam P.W.-2, an eye witness, that the accident had taken place by the Bus No.- U.P.- 70-D-9037. He further submitted that P.W.2 has lodged FIR with regard to the alleged accident and there was no contradiction or inconsistency in the testimony of P.W.-2. Thus, the Tribunal was justified in believing the testimony of P.W.-2 while holding that the accident had taken place by Bus No.- U.P. 70- D- 9037. He further submits that the Tribunal had rightly disbelieved the testimony of D.W.-1 Gautam Singh, driver of the Bus inasmuch as it is not expected from D.W.-1 to give correct statement in view of the fact that the charge sheet in criminal case has been filed against him.

Having heard learned counsel for the parties, and having perused the record, we find that the Tribunal has discussed in detail the statement of P.W.-2 and thereafter recorded the finding that the Bus No.- U.P. 70-D-9037 `was involved in the accident. The counsel for the appellant could not point out any perversity in the finding of the Tribunal on the issue of involvement of vehicle which is also supported by documentary evidence namely FIR,

charge sheet etc. We also find from the finding of the Tribunal that the Tribunal has correctly disbelieved the testimony of D.W.-1 Gautam Singh driver of the Bus on the ground that it cannot be believed that the driver would give testimony against him. Thus, for the reasons indicated herein above, the finding recorded by the Tribunal on the involvement of the Bus in the accident is a finding of fact and do not call for interference by this Court. Consequently the appeal filed by the U.P.S.R.T.C. deserves to be dismissed.

Now we would deal with F.A.F.O. No.- 2276 of 20058. The claimant/appellant challenging the finding on the quantification of compensation has submitted that the deceased was electrician. The claimant/appellant Smt. Perveen Bano has appeared as P.W.-1 and has deposed that the deceased was electrician and was earning Rs. 5,000/- per month. He submits that in the absence of any evidence led by the U.P.S.R.T.C. to rebut the testimony of P.W.- 1, the Tribunal has erred in disbelieving the testimony of P.W.-1 while holding that the claimant could not prove that the deceased was electrician. He submits that the claimant had proved that the deceased was electrician, and even if no documentary evidence was produced with regard to the income of deceased, relying upon the Apex Court judgement in the case of ***Laxmi Devi and others v. Mohd. Tabbar and others [2008 (12) SCC 165]***, he submits that the Tribunal ought to have assessed the compensation treating the income of deceased to be Rs. 3,000/- per month i.e. 36,000/- per annum. He further submits that the claimant are 6 in numbers, therefore the Tribunal should have deducted 1/4 towards personal expenses of deceased. The claimants are entitled for 40% future prospect as the age of the deceased was 35 years and was self employed. Lastly he submits that a very meagre amount of Rs. 2,000/-, 5,000/- and Rs. 2,500/- has been awarded towards funeral expenses, loss of consortium and loss of estate respectively. The submission with regard to the personal deduction, future prospect, award under conventional heads namely funeral expenses, loss of consortium and loss of estate has been made on the strength of the judgement of the Apex Court in the case of ***National Insurance Company Ltd. Vs. Pranay Sethi & Others in Special Leave Petition (Civil) No. 25590 of 2014 decided on 31.10.2017.***

Per contra counsel for the U.P.S.R.T.C. has submitted that the claimant could not prove that the deceased was electrician and was earning Rs. 5,000/- per month, therefore the Tribunal was justified in computing the compensation on the basis of notional income i.e. 15,000/- per annum. He further submits that the compensation awarded is just and proper and do not call for any interference by this Court.

We have perused the record, and from the record it is evident that the claimant no.- 1 had appeared as P.W.-1 to prove that the deceased was electrician. In the absence of any evidence contrary to testimony of P.W.-1, the Tribunal has erred in holding that the claimant could not prove that the deceased was electrician, and consequently, the finding of the Tribunal in this regard is not sustainable and is set aside. Thus, we hold that the compensation should be computed treating the income of deceased to be 3,000/- per month i.e. Rs. 36,000/- per annum in view of the Apex Court judgement in case of ***Laxmi Devi (Supra)***.

Following the judgement of the Apex Court in the case of Constitution Bench Judgement ***National Insurance Company Ltd. Vs. Pranay Sethi & Others in Special Leave Petition (Civil) No. 25590 of 2014 decided on 31.10.2017***, we hold that the compensation should be computed by deducting 1/4 from the income of the deceased as claimants are six in numbers. We also hold that the claimants are entitled for 40% future prospects as the deceased was 35 years and was self employed. We find that a very meagre amount has been awarded towards funeral expenses, loss of consortium and loss of estate, and therefore we enhance the amount awarded towards the funeral expenses from Rs. 2,000/- to Rs. 15,000/-, loss of consortium from Rs. 5,000/- to Rs. 15,000/ and loss of estate from Rs. 2,500/- to Rs. 15,000/-.

The enhanced amount of compensation shall carry the same rate of interest as awarded the Tribunal.

Thus the appeal of the U.P.S.R.T.C. is dismissed, and the appeal of the claimant is allowed to the extent indicated above. The U.P.S.R.T.C. is directed to pay the enhanced amount of compensation to the claimants within a period of three months.

There shall be no orders as to costs.

**Order Date :-** 30.11.2017/Israr

